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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11
12

13 **EDGAR SOLIS,**

14 Plaintiff,

15 v.

16
17 **COUNTY OF RIVERSIDE; STATE**
OF CALIFORNIA; SALVADOR
18 **WALTERMIRE; and DOES 1-10,**
19 **inclusive,**

20 Defendants,

5:23-cv-00515-HDV-JPR

Honorable Hernán D. Vera
Magistrate Judge Jean P. Rosenbluth

**DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION IN
LIMINE NO. 4 – TO EXCLUDE
DEFENDANTS' TOXICOLOGY
EXPERT DR. RITTER**

Hearing on Motions in Limine:
October 1, 2024 at 09:00 a.m.

Final Pretrial Conference:
October 8, 2024 at 10:00 a.m.

Jury Trial
October 29, 2024 at 09:00 a.m.
Ctvm: 10D

**TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendants, State of California, by the through the California Highway Patrol, and Officer Michael Bell, hereby file their Opposition Plaintiff, Edgar Solis' hereby Motion in Limine No. 4 to exclude the testimony of Dr. Michale Ritter.

INTRODUCTION

Plaintiff motion instant motion in limine No. 4 seeks to exclude testimony from Defendants' Expert, Dr. Michael Ritter by arguing that his opinions as an Emergency Room physician are irrelevant, confusing, and include information unknown to Officer Bell at the time of the incident. Plaintiff also attempts to disqualify Dr. Ritter as an expert based on his methodology and claims that his opinions are speculative. Dr. Ritter, who is a board-certified emergency physician with 30 years of experience, was retained by Defendants to opine on Plaintiff's drug intoxication when he presented to the Emergency Room on the date of the incident, as well as how this intoxication effected his behavior during the incident.

The presence of PCP and methamphetamine in Plaintiff's system is relevant to liability and damages. Whether or not Plaintiff was on PCP and/or methamphetamine is relevant to his state of mind and would have influenced his conduct during his encounter with Officer Bell. Furthermore, Dr. Ritter's background and experience as a board-certified emergency room physician qualifies him to opine on the levels of PCP and methamphetamine found in Plaintiff's system once he presented to the emergency room, as well as the effect it had on his state of mind and/or physical abilities and response to pain stimuli such as a gunshot, during the shooting. Accordingly, Plaintiff's motion in limine No. 4 should be denied.

LEGAL STANDARD

Pursuant to the Federal Rules of Evidence, expert testimony is permitted only where such testimony: (1) will be helpful to the trier of fact; (2) is based on sufficient facts or data; (3) is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case. Fed. R. Evid. 702. The trial court has the task of ensuring that an expert's testimony: (1) rests upon a reliable foundation, and (2) is relevant to the issue at hand. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999). Under the Federal Rules, the trial judge serves as an "independent gatekeeper" who has the responsibility of assessing the admissibility of expert testimony, and who must make gateway determinations regarding both the reliability and relevancy of the proposed expert testimony before it is admitted. *Estate of Barabin v. AstenJohnson, Inc.*, 740 F3d 457, 463, 467 (9th Cir. 2014) (overruled on other grounds by *United States v. Bacon*, 979 F3d 766, 768-770 (9th Cir. 2020)). This gatekeeping function includes not only expert testimony based upon "scientific knowledge," but also to any testimony based upon 'technical' and/or 'other specialized knowledge.' *Kumho Tire*, 526 U.S. at 147-148.

ARGUMENT

I. DR. RITTER'S INADVERTENT FAILURE TO COMPLY WITH FEDERAL RULE OF CIVIL PROCEDURE 26 DOES NOT WARRANT EXCLUSION

Plaintiff first contends that Dr. Ritter should be excluded from testifying because he failed to provide his fee schedule as part of his Rule 26 Report. He further attempts to exclude Dr. Ritter's testimony because Dr. Ritter failed to list all documents he relied upon when forming his opinions in his Rule 26 Report. Not only did Dr. Ritter testify that his report should have contained his fee schedule, but he also offered to provide it to opposing counsel during his deposition. (Declaration

1 of David Klehm, Exhibit “A”, Deposition of Dr. Michael Ritter, pg. 11:2-5). Dr.
2 Ritter also provided testimony regarding his fee schedule, including what he
3 charges for depositions, trial testimony, evaluation and expert reports. (Klehm Decl.
4 Ex. “A”, Ritter Depo., pg. 11:2-19.) Furthermore, it is clear from Dr. Ritter’s
5 testimony that the documents he relied upon when forming his opinions in this
6 matter were not only identified in his Rule 26 Report, but also described during his
7 deposition. (Klehm Decl. Ex. “A”, Ritter Depo., pg. 13:10-12; pg. 14:10-13; pg.
8 15:13-15.) Thus, Plaintiff’s arguments lack merit and do not warrant exclusion of
9 Dr. Ritter’s testimony.

10 **II. DR RITTER’S OPINIONS ARE BASED ON SUFFICIENT FACTS**
11 **AND DATA AND HIS METHODOLOGY IS RELIABLE**

12 Plaintiff makes multiple arguments claiming that Dr. Ritter’s methodology is
13 unreliable for reasons not relevant to Dr. Ritter’s background and training as an
14 emergency room physician. For example, Plaintiff claims that Dr. Ritter’s
15 methodology is unreliable because: (1) the Ring video that he reviewed did not
16 depict the Plaintiff; (2) Dr. Ritter has never been retained in an officer-involved
17 shooting case; and (3) Dr. Ritter has never been retained to opine on the effects of
18 PCP or methamphetamine in a case involving law enforcement before. Dr. Ritter
19 has not been retained to opine on liability; rather, he has been retained by
20 Defendants to opine on the effects of the drugs that were present in Plaintiff’s
21 system when he presented to the emergency room, and how this intoxication played
22 a role in Plaintiff’s behavior prior to and during the shooting.

23 **A. Dr. Ritter’s Opinions on Plaintiff’s Drug Intoxication Are Specific to**
24 **Plaintiff’s Time Spent in the Emergency Room**

25 Plaintiff contends that Dr. Ritter’s opinions are not based on sufficient facts
26 and data because he only reviewed 2,673 pages of the 8,878 pages of medical
27 records produced during discovery. (Plaintiff’s MIL No. 4, pg. 5.) Again, Dr. Ritter,
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1 an emergency room physician, was retained to opine only on Plaintiff's drug
2 intoxication when he presented to the Emergency Room on the date of the incident.
3 Thus, the review of the entirety of Plaintiff's medical records, most of which deal
4 with his post-emergency room care, was not necessary.

5 Plaintiff further contends that Dr. Ritter's opinions should be excluded
6 because he failed to review the deposition of Plaintiff. Arguably, since Plaintiff
7 invoked his Fifth Amendment Right during the entirety of his deposition, there was
8 nothing of value for Dr. Ritter to review that would have changed his opinions.

9 **B. Dr. Ritter's Opinions are Based on His Years of Training and**
10 **Experience as an Emergency Room Physician**

11 In exercising its gatekeeper function, the trial court must examine the
12 expert's conclusions and opinions to determine whether they could reliably flow
13 from the facts known to the expert and the methodology used. *Oddi v. Ford Motor*
14 *Co.*, 234 F.3d 136, 146 (3rd Cir. 2000); *Koken v. Black & Veatch Const., Inc.*, 426
15 F.3d 39, 47 (1st Cir. 2005). Plaintiff argues that Defendants are only using Dr.
16 Ritter to exaggerate Plaintiff's level of intoxication, and attacks Dr. Ritter's
17 methodology claiming it is unreliable for the following reasons: (1) Dr. Ritter is
18 unable to opine on the specific level of drugs that were present in Plaintiff's system
19 at the time he presented to the emergency room; (2) Dr. Ritter cannot conclude that
20 the blood draw occurred after the blood transfusion occurred; and (3) Dr. Ritter
21 cannot conclude whether Plaintiff's blood samples that were sent to BioTox
22 Laboratories were diluted in any way.

23 In his Rule 26 Report, Dr. Ritter opines that the BioTox lab analysis yielded
24 a lower level that was in the Plaintiff's system at the time of the shooting due to
25 blood serum dilution. Since Plaintiff had lost a large volume of blood, with
26 approximately 60-70% of his blood total blood volume being replaced prior to the
27 test same being taken, the true value of the PCP and methamphetamine would have
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1 been double to triple of what is shown on the lab analysis. (Klehm Decl. Ex. “A”,
2 Dr. Ritter’s Rule 26 Report, pg. 9.) However, Dr. Ritter explained during his
3 deposition that the BioTox lab analysis provides a timestamp saying the specimen
4 was collected at 15:05, which was impossible because Plaintiff had not even
5 presented to the emergency room at that time. (Klehm Decl. Ex. “A”, Ritter Depo,
6 pg. 54:23-55:4.) Dr. Ritter then acknowledged that the blood draw would have had
7 to occur prior to the blood transfusion because it would mess up any future blood
8 typing that needed to be done. (Klehm Decl. Ex. “A”, Ritter Depo., pg. 55:16-56:6.)
9 Nonetheless, even if the blood draw occurred prior to the blood transfusion,
10 Plaintiff’s blood was still diluted from the IV fluids that were provided prior to the
11 blood draw. (Klehm Decl. Ex. “A”, Ritter Depo., pg. 56:7-23.) Since Plaintiff’s
12 blood was diluted at the time of the blood draw, his blood toxicology results were
13 altered, meaning the levels of PCP and methamphetamine were higher than what
14 was recorded by the BioTox laboratory analysis. (Klehm Decl. Ex. “A”, Ritter
15 Depo., 56:24-58:7.) Although Dr. Ritter was unable to provide an exact number as
16 to how much of Plaintiff’s blood was diluted, there is evidence that it was diluted,
17 and therefore had an effect on the drug toxicology results. (Klehm Decl. Ex. “A”,
18 Ritter Depo., 58:8-22.)

19 **III. DR. RITTER’S OPINIONS ARE RELIABLE AND HELPFUL TO**
20 **THE TRIER OF FACT**

21 Finally, Plaintiff argues that Dr. Ritter should be excluded because his
22 opinions are not reliable or helpful to the trier of fact. Specifically, he argues that
23 Dr. Ritter cannot testify as to whether Plaintiff felt pain when being shot and
24 immediately thereafter, because he did not hear such testimony from Plaintiff
25 himself, or review videos that were produced, that show him in pain. (Plaintiff’s
26 MIL No. 4., pg. 9.) Plaintiff’s arguments lack merit for several reasons.

27 First, Dr. Ritter’s opinions on the pain perceptions while on these drugs are
28 specific to the effect that PCP and methamphetamine have on its users – namely the

1 fact that these substances have an additive effect on inhibiting pain perception.
2 (Klehm Decl. Ex. "A", Ritter Depo., pg. 59:12-60:9.) Second, since Plaintiff
3 invoked his Fifth Amendment Right during his deposition, there is no testimony
4 related to the pain he felt during and after the shooting for Dr. Ritter to have
5 reviewed. Finally, the fact that Dr. Ritter's Rule 26 Report does not have an opinion
6 as to how much pain Plaintiff was in during and after the incident does not warrant
7 exclusion as Plaintiff's counsel explored this opinion from Dr. Ritter during Dr.
8 Ritter's deposition. Consequently, there would be no "surprise" at trial since
9 counsel elicited testimony from Dr. Ritter specifically about his opinion on this
10 topic.

11 CONCLUSION

12 For the foregoing reasons, Defendants respectfully request that Plaintiff's
13 Motion in Limine No. 4 be denied.
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16 Dated: September 24, 2024

Respectfully submitted,

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